

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

Paul Henderson, #227692, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 )  
 )  
 Warden McCormick Correctional )  
 Institution, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Civil Action No.: 2:18-cv-01239-JMC

**OPINION AND ORDER**

This matter is before the court for review of Magistrate Judge Mary G. Baker’s (“Magistrate Judge”) Report and Recommendation (“Report”) filed on July 2, 2018 (ECF No. 14). The Report addresses Plaintiff Paul Henderson’s (“Plaintiff”) Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) and recommends that the court dismiss Plaintiff’s Petition. (ECF No. 14.) For the reasons stated herein, the court **ACCEPTS** the Report, **DISMISSES** the Petition with prejudice, and **DENIES** a certificate of appealability.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

The Report sets forth the relevant facts and legal standards which this court incorporates herein without a full recitation. (ECF No. 14.) As brief background, Plaintiff was found guilty of burglary in the first degree and was sentenced to life imprisonment in January 2000. (ECF No. 1 at 1.) The conviction was affirmed on appeal on February 25, 2002. (ECF No. 14 at 2.) Plaintiff did not seek further review after the appeal, but filed an application for state post-conviction relief (“PCR”) on April 19, 2002. (*Id.* at 2-3.) The state PCR review was dismissed on August 6, 2009

by a trial court, and an amended dismissal was entered on November 13, 2009. (*Id.* at 3.) The Remittitur Order from the South Carolina Supreme Court was filed on January 31, 2012. (*Id.*)

Plaintiff, proceeding *pro se* and *in forma pauperis*, filed the instant Petition on April 12, 2018, more than six years after the conclusion of the state PCR review. (*Id.* at 3-4.) On May 25, 2018, the Magistrate Judge issued an Order to Show Cause because the Petition was not timely and failed to comply with a one year period of limitations. (ECF No. 9 at 1-2.) Plaintiff was given until June 14, 2018 to respond to the Magistrate Judge, but failed to do so. (ECF No. 14 at 4.) As of this date, August 16, 2018, Plaintiff has yet to respond to the Magistrate Judge.

On July 2, 2018, the Magistrate Judge issued a Report and found that Plaintiff's Petition was barred by a one year period of limitations. (*Id.* at 6.) Additionally, the Report concluded that Plaintiff was not entitled to a certificate of appealability because the law concerning the "[period of limitations] is binding and well-settled." (*Id.* at 7.) On this basis, the Report recommended that the court dismiss Plaintiff's Petition with prejudice and deny a certificate of appealability. (*Id.*)

## **II. STANDARD OF REVIEW**

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge only makes a recommendation to this court, and the recommendation has no presumptive weight. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The responsibility to make a final determination remains with the court. *Id.* at 271. As such, the court is charged with making *de novo* determinations of those portions of the Report and Recommendation to which specific objections are made. *See* 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). Thus, the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

### III. DISCUSSION

The parties were apprised of their opportunity to file objections to the Report on July 2, 2018. (ECF No. 14.) Objections to the Report were due by July 16, 2018. (*Id.*) Neither party filed an objection to the Report.

In the absence of specific objections to the Magistrate Judge's Report, the court is not required to give any explanation for adopting the Report. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Furthermore, a failure to file specific written objections to the Report results in a party's waiver of the right to appeal from the judgment of the court based upon such recommendation. 28 U.S.C. § 636(b)(1). Since no specific objections were filed by Plaintiff, the court adopts the Report herein. *Camby*, 718 F.2d at 199.

### IV. CONCLUSION

After a thorough review of the Report and the record in this case, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 14) and incorporates it herein. Plaintiff's Petition for Writ of Habeas Corpus (ECF No. 1) is **DISMISSED** with prejudice and a certificate of appealability is **DENIED**.

**IT IS SO ORDERED.**



United States District Judge

August 16, 2018  
Columbia, South Carolina